

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NorCal Tea Party Patriots, et al.,	:	
	:	Case No. 1:13-cv-341
Plaintiffs,	:	
	:	Judge Susan J. Dlott
v.	:	
	:	Order on Miscellaneous Motions
Internal Revenue Service, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on multiple motions: (1) Plaintiffs' Notice of Waiver of Request for a Hearing and Alternative Motion to Commence Merits Discovery (Doc. 209); (2) The Government's Motion for Partial Summary Judgment (Doc. 212); (3) Plaintiffs' Motion to Strike or Defer Consideration of Motion for Summary Judgment as to Count III and Motion to Set Briefing Schedule as to Standing Under Count II (Doc. 214); and (4) Plaintiff's Motion to Expedite Consideration of Motion to Strike or Defer Consideration of Motion for Summary Judgment (Doc. 215).

I. BACKGROUND AND DISCUSSION

The Court bifurcated discovery for this case at a scheduling conference held on September 23, 2014 determining that the class certification issue would be resolved before merits discovery began. Plaintiffs then filed a Motion for Class Certification (Docs. 193/194) on August 3, 2015 following targeted discovery. The parties filed the pending motions concerning merits discovery and summary judgment while the Motion for Class Certification was pending. The Court is issuing contemporaneously herewith the SEALED Order Granting Plaintiffs' Motion for Class Certification. It is now time to proceed with merits discovery and adjudication.

The Government seeks to bypass or restrict merits discovery and proceed directly to merits adjudication by filing a Motion for Partial Summary Judgment. The Government contends that Count II fails as a matter of law on the related bases of mootness and lack of standing. The Government contends that the Count III claim for wrongful inspection asserted by Plaintiffs NorCal Tea Party Patriots, South Dakota Citizens for Liberty, Inc., Texas Patriots Tea Party, Americans Against Oppressive Laws, Inc., and San Angelo Tea Party fails on the merits.¹ Finally, the Government asserts pursuant to Federal Rule of Civil Procedure 56(d) that Plaintiffs are entitled to discovery only to the extent that they can show “by affidavit or declaration that, for specific reasons, [they] cannot present facts essential to justify [their] opposition.”

Plaintiffs respond that the Court should strike the Motion for Partial Summary Judgment insofar as it pertains to Count III and that merits discovery should proceed in the normal course. However, Plaintiffs appear to agree that the Court should determine the Count II jurisdictional issue without delay after full briefing of the issue.

The Court finds it appropriate to maintain the bifurcated litigation plan established near the onset of this case. The Court will strike as premature the Motion for Partial Summary Judgment, in part, as pertains to Count III. However, given the agreement of the parties, the Court will determine the Count II jurisdictional issue expeditiously after briefing. Plaintiffs shall file a memorandum in opposition to the Motion for Partial Summary Judgment as to Count II within 21 days of the date of this Order. The Government shall file its reply within 14 days thereafter.

¹ The Government does not appear to seek summary judgment on the Count III wrongful disclosure claim asserted by Plaintiff Texas Public Policy Foundation.

II. CONCLUSION

For the foregoing reasons, (1) Plaintiffs' Notice of Waiver of Request for a Hearing and Alternative Motion to Commence Merits Discovery (Doc. 209) is **DENIED AS MOOT**; (2) The Government's Motion for Partial Summary Judgment (Doc. 212) is **STRICKEN IN PART AS TO COUNT III**; (3) Plaintiffs' Motion to Strike or Defer Consideration of Motion for Summary Judgment as to Count III and Motion to Set Briefing Schedule as to Standing Under Count II is **GRANTED** as set forth above (Doc. 214); and (4) Plaintiff's Motion to Expedite Consideration of Motion to Strike or Defer Consideration of Motion for Summary Judgment (Doc. 215) is **DENIED AS MOOT**.

IT IS SO ORDERED.

____s/Susan J. Dlott_____
Judge Susan J. Dlott
United States District Court